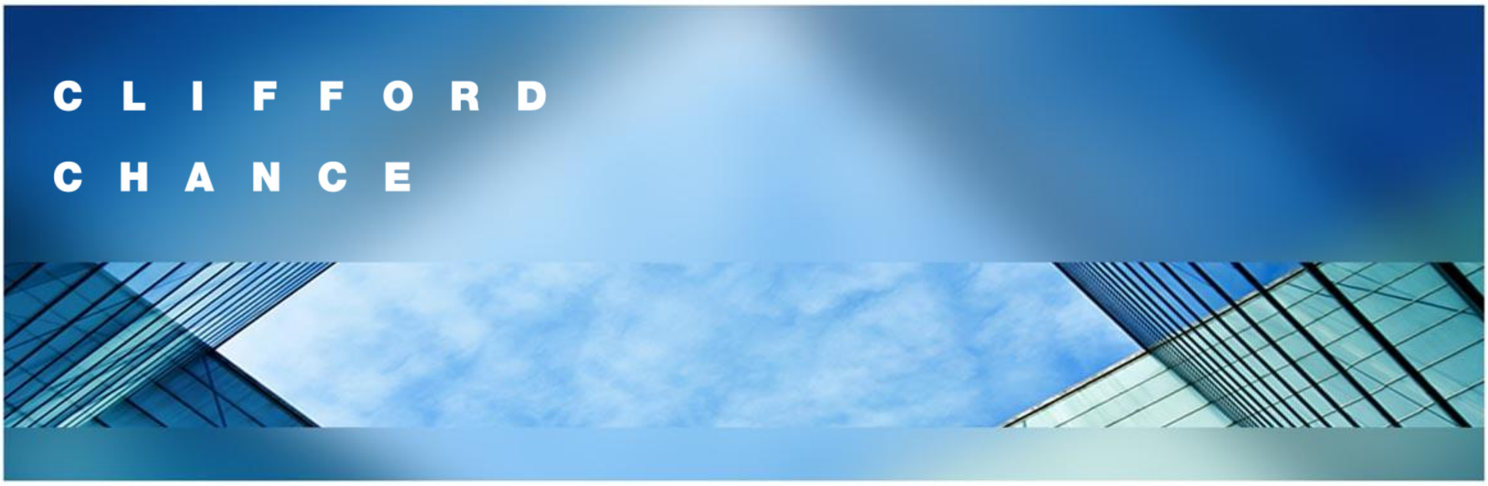

THE FUTURE OF PENSIONS ACT – THE NEW DUTCH PENSION SYSTEM

The Upper House of the Dutch parliament approved the Future of Pensions Act (*Wet Toekomst Pensioenen)* on 30 May 2023. This Act will radically change the Dutch pension system and mean that the Netherlands will be moving from a system geared towards equal accrual to a system based on allocating an equal contribution. A lot will change – not just as regards pension accrual – and in some regards action will have to be taken shortly.

THE NEW OLD AGE PENSION

The Dutch pension system is currently geared towards equal accrual. Under an accrual plan (DB), every member, regardless of their age, accrues each year a part of their pension that is equal to a percentage of their income. Under a contribution plan (DC), the contribution that has to be paid for each member is often age-dependent for the accrual of a personal capital that can be used to purchase an equal pension for everyone. Under the new pension system, all pension plans must be set up in such a way that the accrual of old age pension happens by making the same percentage of contribution (based on income) available to every member, regardless of their age. All plans therefore become contribution plans and accrual plans will no longer be permitted in the future. Since the contribution being paid to the new plan is independent of age, younger members will accrue more pension than older members in any year because their contribution can yield a return for a longer period. In other words, no longer equal accrual but rather equal contributions. There will be three types of new pension plans. The first is the solidarity pension plan, where everyone accrues a share of the total assets and the plan provides for a variable benefit from the retirement date; variable in the sense that lifelong pension distributions will remain subject to market fluctuations (albeit with all sorts of cushioning and redistribution methodologies). The second is the flexible pension plan, where everyone accrues an individual pension capital and can opt to apply that capital for the purchase of a fixed or variable benefit. Finally, the third variant is the contribution distribution contract, which only insurers will be allowed to manage and which provides for the purchase of a fixed benefit during the final 15 years before reaching the retirement date.

Key issues

- The Future of Pensions Act comes into effect on 1 July 2023
- All pension plans in force on 30 June 2023 have to be adapted to the new system by 1 January 2028
- Surviving relatives' pensions and the joining-up age are also changing
- There are lots of things to ponder carefully at this stage (in addition to the type of plan, the amount of the contribution and the percentage for surviving relatives' pension), such as the transitional rules, a collective transfer and possible compensation

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THE NEW SURVIVING RELATIVES' PENSION

Surviving relatives' pensions will also be changing. Currently there are lots of possible variants, for instance accrual of build-up surviving relatives' pension or risk insured benefits. Also, not all pension plans use the same definition of "partner". As there are differences in the provision of surviving relatives' pensions, this leads to problems in practice. This is set to change. The new system will mean that the surviving relatives' pension will always be a risk insurance during membership, based on salary at the time of death. There is also to be a uniform definition of "partner". If the insurance provides for a surviving relatives' pension, it will always apply to partners by marriage, registration, and cohabitation. The amount of the insured surviving relatives' pension (up to a maximum of 50% of income) may however vary from one pension plan to another and the insurance will run on for at least three months after the end of membership. The insurance will also continue during any period of entitlement to benefits under the Dutch Unemployment Benefits Act or Sickness Benefits Act.

MINIMUM AGE

From 1 January 2024 onwards, all pension plans must be open to members of 18 and above. It will therefore no longer be permissible to exclude employees under the age of 21 from accruing old age pension benefits. This also in pension plans that have not yet be adapted to the new system.

TRANSITIONAL RULES

The position with existing contribution plans (DC plans) with an age-dependent rating table is that in certain cases they may be continued as they are, without restriction, if the plan exists on 30 June 2023 and for everyone who is a member before 1 January 2028. The age-dependent table rates for contributions will however have to be adjusted to the new table for age-dependent contributions prepared by the Tax Authorities. If employers opt for these transitional rules, they will end up with two pension plans in the future, one for existing employees and one for the new employees. While this might be all well and good as a solution for having to effect little or no compensation, it may raise other issues. These transitional rules do not apply to the surviving relatives' pensions, which will have to be adjusted in line with the new system.

THE TRANSITION

For the transition from a system of equal accrual to a system of equal contributions, the social partners – which will include individual employers in conjunction with the works councils – will first have to decide on when which type of new style contribution plan is to be introduced; what the level of the fixed contribution to be used will be (maximum of 30%) and the percentage of the surviving relatives' pension that has to be insured; whether or not to use the transitional rules; and finally any possible compensation and how that is to be financed. If you are dealing with plans managed by pension funds, other decisions to be made are (i.a.) about how reserves are set up so that benefit payments can be stabilised, the rules on allocation of investment yields and whether to opt for a collective conversion.

This is because the leading rule is that pension funds will be converting all accrual (including ongoing benefit payments) into accrual and distributions under the new system. This will then be done collectively, with the beneficiaries having no individual say or choice. Not opting for a collective conversion is only possible, in principle, if doing so would generate disproportionate results for groups of beneficiaries.

As far as compensation is concerned, this is not compulsory but may well be needed (a) to cope with the adverse effects of the transition on the employees and (b) to secure the consent of employees and their representatives for the new plan. This is because the transition to the new system with flat rate contributions means that older employees will accrue less pension than younger ones and might suffer a setback as a result.

FINALLY

To summarise, there's plenty to think about and we have not even discussed what this will mean for pension providers and their advisers. Our advice is therefore not to wait until the last moment and not to leave it to others to deal with, but to start promptly on adopting policy on how to deal with all the upcoming changes and their financial ramifications.

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